

Substitute for HOUSE BILL No. 2525

By Committee on Taxation

2-7

10 AN ACT concerning property taxation; relating to exemptions; certain
11 telecommunications and railroad machinery and equipment; concern-
12 ing payments to counties; amending K.S.A. 2005 Supp. 79-213 and
13 repealing the existing section.

14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. (a) It is the purpose of this section to promote, stim-
17 ulate, foster and encourage new investments in telecommunications ma-
18 chinery and equipment and railroad machinery and equipment in the
19 state of Kansas, to recognize the dramatic changes within the telecom-
20 munications industry, to contribute to the economic recovery of the state,
21 to enhance business opportunities in the state, to encourage the location
22 of new businesses and industries in the state as well as the retention and
23 expansion of existing businesses and industries and to promote the eco-
24 nomic stability of the state by maintaining and providing employment
25 opportunities, thereby contributing to the general welfare of the citizens
26 of the state, by exempting from property taxation certain newly purchased
27 or leased telecommunications machinery and equipment and railroad ma-
28 chinery and equipment, including all such machinery and equipment
29 transferred into this state for the purpose of expanding an existing busi-
30 ness or for the creation of a new business.

31 (b) The following described property, to the extent specified by this
32 section, shall be and is hereby exempt from all property or ad valorem
33 taxes levied under the laws of the state of Kansas:

34 *First.* Telecommunications machinery and equipment and railroad ma-
35 chinery and equipment acquired by qualified purchase or lease made or
36 entered into after June 30, 2006, as the result of a bona fide transaction
37 not consummated for the purpose of avoiding taxation.

38 *Second.* Telecommunications machinery and equipment and railroad
39 machinery and equipment transported into this state after June 30, 2006,
40 for the purpose of expanding an existing business or creation of a new
41 business.

42 (c) As used in this section:

43 (1) "Qualified lease" means a lease of telecommunications machinery

1 and equipment or railroad machinery and equipment for not less than 30
2 days for fair and valuable consideration where such machinery and equip-
3 ment is physically transferred to the lessee to be used in the lessee's
4 business or trade;

5 (2) "qualified purchase" means a purchase of telecommunications
6 machinery and equipment or railroad machinery and equipment for fair
7 and valuable consideration where such machinery and equipment is phys-
8 ically transferred to the purchaser to be used in the purchaser's business
9 or trade;

10 (3) "railroad machinery and equipment" means railroad machinery
11 and equipment classified for property tax purposes within subclass (3) of
12 class 2 of section 1 of article 11 of the constitution of the state of Kansas;
13 and

14 (4) "telecommunications machinery and equipment" means network
15 administrative assets; central office equipment; information, station and
16 customer equipment; and outside plant equipment of a telecommunica-
17 tion company.

18 (d) The secretary of revenue is hereby authorized to adopt rules and
19 regulations to administer the provisions of this section.

20 New Sec. 2. (a) There is hereby established in the state treasury the
21 telecommunications and railroad machinery and equipment tax reduction
22 assistance fund which shall be administered by the state treasurer. All
23 expenditures from the telecommunications and railroad machinery and
24 equipment tax reduction assistance fund shall be for the payments to
25 counties for distribution to taxing subdivisions levying ad valorem taxes
26 within the county in accordance with this section.

27 (b) The secretary of revenue shall adopt a policy using the most cur-
28 rent information that is available, and that is determined to be practicable
29 by the secretary for this purpose and shall calculate the following:

30 (1) On January 31, 2008, the secretary shall calculate for each county
31 an amount equal to the difference in total ad valorem ~~tax receipts for ad~~
32 ~~valorem taxes imposed and collected~~ **[taxes levied]** by the county for all
33 taxing subdivisions within the county imposing ad valorem taxes on tele-
34 communications machinery and equipment and railroad machinery and
35 equipment for tax year 2005, and the total of such ad valorem ~~tax receipts~~
36 ~~for ad valorem taxes imposed~~ **[taxes levied]** for tax year 2007. On or
37 before February 15, 2008, subject to the provisions of subsection (c), the
38 state treasurer shall pay to the county treasurer of each county an amount
39 equal to 100% of such difference for distribution ~~to the taxing subdivisions~~
40 ~~within the county imposing ad valorem taxes on telecommunications ma-~~
41 ~~chinery and equipment and railroad machinery and equipment for ap-~~
42 ~~portionment~~ as provided in subsection (d).

43 (2) On January 31, 2009, the secretary shall calculate for each county

1 an amount equal to the difference in total ad valorem ~~tax receipts for ad~~
2 ~~valorem taxes imposed and collected~~ **[taxes levied]** by the county for all
3 taxing subdivisions within the county imposing ad valorem taxes on tele-
4 communications machinery and equipment and railroad machinery and
5 equipment for tax year 2005, and the total of such ad valorem ~~tax receipts~~
6 ~~for ad valorem taxes imposed~~ **[taxes levied]** for tax year 2008. On or
7 before February 15, 2009, subject to the provisions of subsection (c), the
8 state treasurer shall pay to the county treasurer of each county an amount
9 equal to ~~100%~~ **[80%]** of such difference for distribution ~~to the taxing~~
10 ~~subdivisions within the county imposing ad valorem taxes on telecom-~~
11 ~~munications machinery and equipment and railroad machinery and~~
12 ~~equipment for apportionment as provided in subsection (d).~~

13 (3) On January 31, 2010, the secretary shall calculate for each county
14 an amount equal to the difference in total ad valorem taxes ~~receipts for~~
15 ~~ad valorem tax imposed and collected~~ **[levied]** by the county for all taxing
16 subdivisions within the county imposing ad valorem taxes on telecom-
17 munications machinery and equipment and railroad machinery and
18 equipment for tax year 2005, and the total of such ad valorem ~~tax receipts~~
19 **[taxes levied]** for tax year 2009. On or before February 15, 2010, subject
20 to the provisions of subsection (c), the state treasurer shall pay to the
21 county treasurer of each county an amount equal to ~~80%~~ **[60%]** of such
22 difference for distribution ~~to the taxing subdivisions within the county~~
23 ~~imposing ad valorem taxes on telecommunications machinery and equip-~~
24 ~~ment and railroad machinery and equipment for apportionment as pro-~~
25 ~~vided in subsection (d).~~

26 (4) On January 31, 2011, the secretary shall calculate for each county
27 an amount equal to the difference in total ad valorem taxes ~~receipts for~~
28 ~~ad valorem tax imposed and collected~~ **[levied]** by the county for all taxing
29 subdivisions within the county imposing ad valorem taxes on telecom-
30 munications machinery and equipment and railroad machinery and
31 equipment for tax year 2005, and the total of such ad valorem ~~tax receipts~~
32 **[taxes levied]** for tax year 2010. On or before February 15, 2011, subject
33 to the provisions of subsection (c), the state treasurer shall pay to the
34 county treasurer of each county an amount equal to ~~60%~~ **[40%]** of such
35 difference for distribution ~~to the taxing subdivisions within the county~~
36 ~~imposing ad valorem taxes on telecommunications machinery and equip-~~
37 ~~ment and railroad machinery and equipment for apportionment as pro-~~
38 ~~vided in subsection (d).~~

39 (5) On January 31, 2012, the secretary shall calculate for each county
40 an amount equal to the difference in total ad valorem taxes ~~receipts for~~
41 ~~ad valorem tax imposed and collected~~ **[levied]** by the county for all taxing
42 subdivisions within the county imposing ad valorem taxes on telecom-
43 munications machinery and equipment and railroad machinery and

1 equipment for tax year 2005, and the total of such ad valorem ~~tax receipts~~
2 **[taxes levied]** for tax year 2011. On or before February 15, 2012, subject
3 to the provisions of subsection (c), the state treasurer shall pay to the
4 county treasurer of each county an amount equal to ~~40%~~ **[20%]** of such
5 difference for distribution ~~to the taxing subdivisions within the county~~
6 ~~imposing ad valorem taxes on telecommunications machinery and equip-~~
7 ~~ment and railroad machinery and equipment for apportionment as pro-~~
8 ~~vided in subsection (d).~~

9 (6) ~~On January 31, 2013, the secretary shall calculate for each county~~
10 ~~an amount equal to the difference in total ad valorem taxes receipts for~~
11 ~~ad valorem tax imposed and collected **[levied]** by the county for all taxing~~
12 ~~subdivisions within the county imposing ad valorem taxes on telecom-~~
13 ~~munications machinery and equipment and railroad machinery and~~
14 ~~equipment for tax year 2005, and the total of such ad valorem tax receipts~~
15 ~~**[taxes levied]** for tax year 2012. On or before February 15, 2013, subject~~
16 ~~to the provisions of subsection (c), the state treasurer shall pay to the~~
17 ~~county treasurer of each county an amount equal to 20% of such differ-~~
18 ~~ence for distribution to the taxing subdivisions within the county imposing~~
19 ~~ad valorem taxes on telecommunications machinery and equipment and~~
20 ~~railroad machinery and equipment for apportionment as provided in sub-~~
21 ~~section (d).~~

22 ~~(7)~~ There shall be no payments made pursuant to this section after
23 the payments made by the state treasurer on or before February ~~1, 2013~~
24 **[15, 2012]** and the provisions of this section shall expire at such time.

25 (c) If the amount calculated for the difference in subsections (b)(1)
26 through (b)(5) is negative, the amount calculated for such county for such
27 year shall be deemed to be zero and no amount shall be paid to the county
28 treasurer of such county as otherwise provided in subsection (b). Nothing
29 in this section shall be construed to require the county to make any pay-
30 ments to the state in such event that the amount calculated for the dif-
31 ference is negative for the county for such year.

32 (d) (1) On January 31 of each year specified in this section, the sec-
33 retary of revenue shall certify to the director of accounts and reports the
34 aggregate of all amounts determined for counties pursuant to subsection
35 (b). Upon receipt of such certification, the director of accounts and re-
36 ports shall transfer the amount certified from the state general fund to
37 the telecommunications and railroad machinery and equipment tax re-
38 duction assistance fund.

39 (2) The state treasurer shall apportion and distribute the moneys
40 credited to the telecommunications and railroad machinery and equip-
41 ment tax reduction assistance fund to the county treasurers in accordance
42 with subsection (b). Upon receipt of each such amount, each county trea-
43 surer shall apportion such amount among the ad valorem taxing subdi-

1 visions in the same proportion that the amount of the total mill levy of
2 each individual taxing subdivision for the preceding tax year bears to the
3 aggregate of such levies of all the taxing subdivisions among which the
4 apportionment is to be made. The county treasurer shall pay such
5 amounts to the taxing subdivisions at the same time or times as their
6 regular operating tax rate mill levy is paid to them.

7 (e) Before January 31 of 2007 through 2013, the secretary of revenue
8 shall make a detailed report of amounts calculated as required pursuant
9 to subsection (b) for each individual county and in aggregate for all the
10 counties for the current year along with any projections for future years,
11 amounts distributed to the counties pursuant to this section, and all other
12 relevant information related to the provisions of this section, and shall
13 present such report before such date to the house committee on taxation
14 of the house of representatives and the senate committee on assessment
15 and taxation of the senate for consideration by the legislature in making
16 any appropriate adjustments to the provisions of this section.

17 Sec. 3. K.S.A. 2005 Supp. 79-213 is hereby amended to read as fol-
18 lows: 79-213. (a) Any property owner requesting an exemption from the
19 payment of ad valorem property taxes assessed, or to be assessed, against
20 their property shall be required to file an initial request for exemption,
21 on forms approved by the board of tax appeals and provided by the county
22 appraiser.

23 (b) The initial exemption request shall identify the property for which
24 the exemption is requested and state, in detail, the legal and factual basis
25 for the exemption claimed.

26 (c) The request for exemption shall be filed with the county appraiser
27 of the county where such property is principally located.

28 (d) After a review of the exemption request, and after a preliminary
29 examination of the facts as alleged, the county appraiser shall recommend
30 that the exemption request either be granted or denied, and, if necessary,
31 that a hearing be held. If a denial is recommended, a statement of the
32 controlling facts and law relied upon shall be included on the form.

33 (e) The county appraiser, after making such written recommenda-
34 tion, shall file the request for exemption and the recommendations of the
35 county appraiser with the board of tax appeals.

36 (f) Upon receipt of the request for exemption, the board shall docket
37 the same and notify the applicant and the county appraiser of such fact.

38 (g) After examination of the request for exemption, and the county
39 appraiser's recommendation related thereto, the board may fix a time and
40 place for hearing, and shall notify the applicant and the county appraiser
41 of the time and place so fixed. A request for exemption pursuant to: (1)
42 Section 13 of article 11 of the Kansas constitution; or (2) K.S.A. 79-201a
43 *Second*, and amendments thereto, for property constructed or purchased,

1 in whole or in part, with the proceeds of revenue bonds under the
2 authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto,
3 prepared in accordance with instructions and assistance which shall be
4 provided by the department of commerce, shall be deemed approved
5 unless scheduled for hearing within 30 days after the date of receipt of
6 all required information and data relating to the request for exemption,
7 and such hearing shall be conducted within 90 days after such date. Such
8 time periods shall be determined without regard to any extension or con-
9 tinuance allowed to either party to such request. In any case where a
10 party to such request for exemption requests a hearing thereon, the same
11 shall be granted. Hearings shall be conducted in accordance with the
12 provisions of the Kansas administrative procedure act. In all instances
13 where the board sets a request for exemption for hearing, the county shall
14 be represented by its county attorney or county counselor.

15 (h) Except as otherwise provided by subsection (g), in the event of a
16 hearing, the same shall be originally set not later than 90 days after the
17 filing of the request for exemption with the board.

18 (i) During the pendency of a request for exemption, no person, firm,
19 unincorporated association, company or corporation charged with real
20 estate or personal property taxes pursuant to K.S.A. 79-2004 and 79-
21 2004a, and amendments thereto, on the tax books in the hands of the
22 county treasurer shall be required to pay the tax from the date the request
23 is filed with the county appraiser until the expiration of 30 days after the
24 board issued its order thereon and the same becomes a final order. In
25 the event that taxes have been assessed against the subject property, no
26 interest shall accrue on any unpaid tax for the year or years in question
27 nor shall the unpaid tax be considered delinquent from the date the re-
28 quest is filed with the county appraiser until the expiration of 30 days
29 after the board issued its order thereon. In the event the board deter-
30 mines an application for exemption is without merit and filed in bad faith
31 to delay the due date of the tax, the tax shall be considered delinquent
32 as of the date the tax would have been due pursuant to K.S.A. 79-2004
33 and 79-2004a, and amendments thereto, and interest shall accrue as pre-
34 scribed therein.

35 (j) In the event the board grants the initial request for exemption,
36 the same shall be effective beginning with the date of first exempt use
37 except that, with respect to property the construction of which com-
38 menced not to exceed 24 months prior to the date of first exempt use,
39 the same shall be effective beginning with the date of commencement of
40 construction.

41 (k) In conjunction with its authority to grant exemptions, the board
42 shall have the authority to abate all unpaid taxes that have accrued from
43 and since the effective date of the exemption. In the event that taxes have

1 been paid during the period where the subject property has been deter-
2 mined to be exempt, the board shall have the authority to order a refund
3 of taxes for the year immediately preceding the year in which the ex-
4 emption application is filed in accordance with subsection (a).

5 (l) The provisions of this section shall not apply to: (1) Farm machin-
6 ery and equipment exempted from ad valorem taxation by K.S.A. 79-201j,
7 and amendments thereto; (2) personal property exempted from ad valo-
8 rem taxation by K.S.A. 79-215, and amendments thereto; (3) wearing
9 apparel, household goods and personal effects exempted from ad valorem
10 taxation by K.S.A. 79-201c, and amendments thereto; (4) livestock; (5)
11 hay and silage exempted from ad valorem taxation by K.S.A. 79-201d, and
12 amendments thereto; (6) merchants' and manufacturers' inventories ex-
13 empted from ad valorem taxation by K.S.A. 79-201m and amendments
14 thereto; (7) grain exempted from ad valorem taxation by K.S.A. 79-201n,
15 and amendments thereto; (8) property exempted from ad valorem taxa-
16 tion by K.S.A. 79-201a *Seventeenth* and amendments thereto, including
17 all property previously acquired by the secretary of transportation or a
18 predecessor in interest, which is used in the administration, construction,
19 maintenance or operation of the state system of highways. The secretary
20 of transportation shall at the time of acquisition of property notify the
21 county appraiser in the county in which the property is located that the
22 acquisition occurred and provide a legal description of the property ac-
23 quired; (9) property exempted from ad valorem taxation by K.S.A. 79-
24 201a *Ninth*, and amendments thereto, including all property previously
25 acquired by the Kansas turnpike authority which is used in the adminis-
26 tration, construction, maintenance or operation of the Kansas turnpike.
27 The Kansas turnpike authority shall at the time of acquisition of property
28 notify the county appraiser in the county in which the property is located
29 that the acquisition occurred and provide a legal description of the prop-
30 erty acquired; (10) aquaculture machinery and equipment exempted from
31 ad valorem taxation by K.S.A. 79-201j, and amendments thereto. As used
32 in this section, "aquaculture" has the same meaning ascribed thereto by
33 K.S.A. 47-1901, and amendments thereto; (11) Christmas tree machinery
34 and equipment exempted from ad valorem taxation by K.S.A. 79-201j,
35 and amendments thereto; (12) property used exclusively by the state or
36 any municipality or political subdivision of the state for right-of-way pur-
37 poses. The state agency or the governing body of the municipality or
38 political subdivision shall at the time of acquisition of property for right-
39 of-way purposes notify the county appraiser in the county in which the
40 property is located that the acquisition occurred and provide a legal de-
41 scription of the property acquired; (13) machinery, equipment, materials
42 and supplies exempted from ad valorem taxation by K.S.A. 79-201w, and
43 amendments thereto; (14) vehicles owned by the state or by any political

1 or taxing subdivision thereof and used exclusively for governmental pur-
2 poses; (15) property used for residential purposes which is exempted pur-
3 suant to K.S.A. 79-201x from the property tax levied pursuant to K.S.A.
4 72-6431, and amendments thereto; (16) from and after July 1, 1998, ve-
5 hicles which are owned by an organization having as one of its purposes
6 the assistance by the provision of transit services to the elderly and to
7 disabled persons and which are exempted pursuant to K.S.A. 79-201
8 Ninth; ~~and~~ (17) from and after July 1, 1998, motor vehicles exempted
9 from taxation by subsection (e) of K.S.A. 79-5107, and amendments
10 thereto; and (18) *telecommunications machinery and equipment and rail-*
11 *road machinery and equipment exempted from property or ad valorem*
12 *taxation by section 1, and amendments thereto.*

13 (m) The provisions of this section shall apply to property exempt pur-
14 suant to the provisions of section 13 of article 11 of the Kansas
15 constitution.

16 (n) The provisions of subsection (k) as amended by this act shall be
17 applicable to all exemption applications filed in accordance with subsec-
18 tion (a) after December 31, 2001.

19 Sec. 4. K.S.A. 2005 Supp. 79-213 is hereby repealed.

20 Sec. 5. This act shall take effect and be in force from and after its
21 publication in the statute book.